IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

**WRIT PETITION NO 3562 OF 1993**

Shri Bajirao Kushal Borse,
Occupation-Service.
Residing at Dehuroad,
House No.11 (Old 15),
Bombay Pune Road, ..Petitioner
District Pune. Orig. Deft.

V/s.

Shri Amarsingh Shersingh Shaikh
deceased, by his legal representative;

1. Satnam Kaur Amarsingh Shaikh,
   Occupation household,
   residing at Dehuroad,
   Tal. Maval, Dist. Pune.

2. Lazzy Tasaram Shaikh,
   Occupation Household,
   resoiding at Dehuraodm ..Respondents
   Tal. Maval, Dist. Pune. Orig. plaintiffs.

Mr. S.B. Deshmukh i/b Mr. Anil V. Anturkar for the petitioner.

None for the respondents.

**CORAM : ANOOP V.MOHTA J.**
**DATE : 21ST JULY, 2005.**

**ORAL JUDGMENT**

. The petitioner is the tenant. The respondent is the landlord. The premises is one room premises, House No. 11 (old 15), Bombay Pune Road, ground floor one room of 10 ’ X 14" situate at Haveli, Taluka. Haveli,

District Pune. The monthly rent of tenancy was Rs.25 plus education cess. The petitioner-tenant was irregular in payment of rent, specially from 1/4/1980, continuously for six months. Therefore the demand notice dated 25/10/1980, was sent and terminated the tenancy of the petitioner. As alleged, the petitioner failed to make payment, as demanded. Therefore, the suit was filed for recovery of possession by the respondent-landlord in the Court of Additional Judge, Small Causes Court, Pune (trial Court). The petitioner tenant, however, filed an application for fixation of standard rent, within one month. The petitioner had also sent money order of Rs. 100/-, covering the period of rent from 30th April 1982 to October, 1982 but the same was refused.

2. The trial Court, after considering the material on the record, passed the judgment and decree dated 30/3/1990 and suit of the respondent-landlord was decreed. The standard rent has been determined at the rate of Rs.20/- per month, excluding education cess. The petitioner therefore, preferred civil appeal No. 673/1990 before the IInd Additional District Judge, Pune, (appellate court). The appellate Court also by

impugned judgment and decree dated 21/7/1993, dismissed the appeal and maintained the decree for possession on the ground of default.

3. Heard Mr. Deshmukh, the learned Counsel appearing for the petitioner. None appeared for the respondents, though served. The learned Counsel has relied on the Judgment passed by the Court in Writ Petition No. 2101/2004 (Shri Bapurao Shantaram Nagpure V. Shri Ramavtar @ Bably Malla), dated 29th November, 2004, decided by Mr Justice R.M.S. Khandeparkar and basically contended that there is a clear non application of mind by the Courts below, by not considering the effect and the protection, as available to the tenant, which flow from the provisions of section 11(3) of the Bombay Rents, Hotel and Lodging House Rates Control Bombay Rent Act (for short Bombay Rent Act). As admittedly, in the present matter the petitioner tenant had filed application M.A.No.935/1980 and the trial Court while passing the decree for possession determined the standard rent. There was no ad interim rent fixed or ordered, as required to be fixed by the Court and, as observed in Shri Bapurrao (Supra).

4. He has further relied also on the fact that the money order, which was sent by him, refused by the landlord. This is also important aspect, which the Court ought to have considered in favour of the petitioner-tenant.

5. The appellate Court while granting the decree in para 21, observed after considering the Nazir's report, has held;

"The appellant's advocate had drawn my attention towards the document Exh.56 i.e. details of the deposit in the Court, the total amount of Rs. 2967.05 from 16/12/1982 to 17/11/1987. The Nazir submitted a report regarding the total deposit from 16/12/1982 to 12/6/1989 amounting to Rs. 2189/-. On pursuing the numbers of the receipts issued by the Court, it seems that the defendant deposited only the rent at the rate of Rs. 20/- and some time that is, from 4/11/1985 to 3/10/1987 he deposited the standard rent plus education cess."

The appellate Court however, further observed that there was no regular payment or full amount deposited including Rs. 1/- per month, as education cess. The observation, that while submitting an application for fixation of standard rent, being the tenant, he ought to have deposited the amount of rent, as called by the plaintiff, through the demand notice, and he ought not

to have waited for the decision of an application for fixation of standard rent. The appellate Court, however, further observed, therefore, on the date of filing of suit dated 23rd January, 1981, he was in arrears of rent and therefore, the petitioner committed the default. This above observation of the appellate Court, even if, has some foundation, till above two submission, as raised by the learned Counsel appearing for the petitioner in respect of refusal of money order, and not considering the fact that the standard rent application was not decided till the date of the decree goes to the root of the matter in such rent default cases. Taking into all these account, I am of the view, that the appellate Court must consider this submissions, as raised above and decide the appeal filed by the petitioner afresh.

6. For the above reasons, the impugned Judgment and decree dated 21/7/1993, is quashed and set aside. The matter is remitted back to the appellate Court i.e. II Additional District Judge, Pune, for reconsideration, in view of the above observations.

7. The petition is allowed accordingly. No order

as to cost.

**[ANOOP V. MOHTA, J.]**